

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

BIG LOTS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

Objection Deadline:
January 24, 2025, at 4:00 p.m. (ET)

Hearing Date:
February 26, 2025, at 10:30 a.m. (ET)

**CHURCH & DWIGHT CO., INC.'S MOTION FOR ENTRY OF AN ORDER
ALLOWING, AND COMPELLING PAYMENT OF, ADMINISTRATIVE EXPENSE
CLAIM AND GRANTING RELATED RELIEF**

Church & Dwight Co., Inc. ("C&D"), by and through its undersigned counsel, hereby moves (this "Motion") for an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), allowing, and compelling immediate payment of, C&D's administrative expense claim in the amount of \$2,369,961.00 (the "Admin Claim"). In support of this Motion, C&D respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots Management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores - PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores - CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors' corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081.

of Delaware, dated as of February 29, 2012. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Local Rule 9013-l(f), C&D consents to the entry of a final order with respect to this Motion if it is determined that the Court lacks adjudicatory authority under Article III of the United States Constitution to enter such final order absent consent of the parties.

3. The bases for the relief requested herein are sections 105(a) and 503(b) of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

4. On September 9, 2024 (the “Petition Date”), the above-referenced debtors and debtors in possession (the “Debtors”) each filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors are operating their business as debtors and debtors in possession. No trustee or examiner has been appointed.

5. Postpetition, C&D routinely provided goods to the Debtors in the ordinary course of business pursuant to certain purchase orders and an agreement between the Debtors and C&D. C&D has not been paid for certain goods it delivered to the Debtors postpetition.

6. As of January 5, 2025, the value of goods C&D provided to the Debtors following the Petition Date total not less than \$2,369,961.00. A summary of the purchase orders past due as of the filing of this Motion are as follows:

<u>Invoice #</u>	<u>PO #</u>	<u>Invoice Date</u>	<u>Net due date</u>	<u>Total Amount Owed</u>
0916497039	95641529	10/23/2024	11/22/2024	5,003.52
0916506109	95643209	10/29/2024	11/28/2024	3,816.00
0916506110	95643208	10/29/2024	11/28/2024	6,768.00
0916513734	0095651928	11/04/2024	12/04/2024	657.60
0916524226	0095666621	11/10/2024	12/11/2024	32,133.96
0916524940	0095666631	11/11/2024	12/11/2024	38,356.12

<u>Invoice #</u>	<u>PO #</u>	<u>Invoice Date</u>	<u>Net due date</u>	<u>Total Amount Owed</u>
0916524946	0095670109	11/11/2024	12/11/2024	1,918.80
0916525456	0095666622	11/11/2024	12/12/2024	30,883.08
0916529985	0095670112	11/14/2024	12/14/2024	3,697.20
0916530317	0095670113	11/14/2024	12/14/2024	5,779.80
0916530825	0095670116	11/14/2024	12/14/2024	14,461.20
0916534163	0095671747	11/17/2024	12/17/2024	45,632.00
0916534167	0095676584	11/17/2024	12/17/2024	26,192.56
0916537425	0095671745	11/19/2024	12/19/2024	36,212.46
0916537426	0095671733	11/19/2024	12/19/2024	33,422.40
0916537427	0095676590	11/19/2024	12/19/2024	32,765.82
0916537428	0095671746	11/19/2024	12/19/2024	61,258.62
0916537429	0095672037	11/19/2024	12/19/2024	27,198.02
0916537430	0095676587	11/19/2024	12/19/2024	46,179.68
0916537931	0095671742	11/19/2024	12/19/2024	27,123.36
0916538431	0095676583	11/19/2024	12/19/2024	20,032.20
0916539185	0095657342	11/20/2024	12/20/2024	13,892.04
0916539186	0095671749	11/20/2024	12/20/2024	29,617.22
0916539187	0095676580	11/20/2024	12/20/2024	36,571.10
0916540210	0095676576	11/20/2024	12/20/2024	16,016.80
0916540211	0095670110	11/20/2024	12/20/2024	3,720.60
0916541206	0095676592	11/21/2024	12/21/2024	31,159.74
0916541207	0095676437	11/21/2024	12/21/2024	22,106.36
0916548368	0095692147	11/25/2024	12/26/2024	30,418.92
0916549122	0095692148	11/26/2024	12/27/2024	30,051.60
0916554282	0095691844	11/30/2024	12/30/2024	13,892.04
0916554597	0095691848	12/1/2024	12/31/2024	16,595.68
0916554598	0095691843	12/1/2024	12/31/2024	32,323.50
0916554599	0095691840	12/1/2024	12/31/2024	38,493.00
0916554600	0095691854	12/1/2024	12/31/2024	20,181.60
0916554601	0095691860	12/1/2024	12/31/2024	30,150.40
0916554602	0095691861	12/1/2024	12/31/2024	37,731.20
0916554603	0095691865	12/1/2024	12/31/2024	36,578.22

<u>Invoice #</u>	<u>PO #</u>	<u>Invoice Date</u>	<u>Net due date</u>	<u>Total Amount Owed</u>
0916554604	0095691866	12/1/2024	12/31/2024	10,547.66
0916554876	0095691857	12/1/2024	12/31/2024	37,731.20
0916555110	0095691853	12/1/2024	12/31/2024	32,981.44
0916555111	0095691845	12/1/2024	12/31/2024	34,598.82
0916555112	0095691855	12/1/2024	12/31/2024	20,264.40
0916555113	0095691856	12/1/2024	12/31/2024	20,264.40
0916555114	0095691858	12/1/2024	12/31/2024	36,916.00
0916555486	0095691851	12/2/2024	01/01/2025	41,086.86
0916555487	0095691847	12/2/2024	01/01/2025	19,985.40
0916555488	0095691846	12/2/2024	01/01/2025	37,731.20
0916555489	0095691839	12/2/2024	01/01/2025	32,128.60
0916555490	0095691838	12/2/2024	01/01/2025	23,452.20
0916555491	0095691862	12/2/2024	01/01/2025	55,347.36
0916555492	0095691863	12/2/2024	01/01/2025	51,037.14
0916555493	0095691800	12/2/2024	01/01/2025	14,126.34
0916556484	0095691867	12/2/2024	01/01/2025	14,341.74
0916557239	0095691852	12/3/2024	01/02/2025	29,125.60
0916557240	0095691841	12/3/2024	01/02/2025	62,049.84
0916560132	0095693284	12/4/2024	01/03/2025	5,431.68
0916560133	0095693286	12/4/2024	01/03/2025	4,375.52
0916560892	0095691864	12/5/2024	01/04/2025	48,279.96
0916560893	0095691842	12/5/2024	01/04/2025	46,847.40
0916560894	0095693283	12/5/2024	01/04/2025	4,526.40
0916561768	0095693287	12/5/2024	01/04/2025	3,611.69
0916561769	0095693285	12/5/2024	01/04/2025	943.00
0916569518	0095691850	12/11/2024	01/10/2025	23,756.04
0916569519	0095691834	12/11/2024	01/10/2025	19,706.40
0916569520	0095691836	12/11/2024	01/10/2025	21,250.80
0916569521	0095691837	12/11/2024	01/10/2025	31,507.20
0916569522	0095691804	12/11/2024	01/10/2025	23,831.00
0916569523	0095691806	12/11/2024	01/10/2025	30,930.40
0916569524	0095691808	12/11/2024	01/10/2025	19,706.40

<u>Invoice #</u>	<u>PO #</u>	<u>Invoice Date</u>	<u>Net due date</u>	<u>Total Amount Owed</u>
0916570902	0095691805	12/11/2024	01/10/2025	20,218.32
			<u>Total:</u>	<u>1,817,630.83</u>

7. In addition, certain purchase orders will become past due shortly following the filing of this Motion. A summary of those purchase orders are as follows:

<u>Invoice #</u>	<u>PO #</u>	<u>Invoice Date</u>	<u>Net due date</u>	<u>Total Amount Owed</u>
0916571986	0095691802	12/12/2024	01/11/2025	33,314.00
0916571987	0095691803	12/12/2024	01/11/2025	37,731.20
0916571988	0095691807	12/12/2024	01/11/2025	33,652.68
0916572554	0095691801	12/12/2024	01/11/2025	25,680.12
0916572555	0095691811	12/12/2024	01/11/2025	26,748.24
0916572877	0095691809	12/12/2024	01/11/2025	29,636.42
0916572878	0095691810	12/12/2024	01/11/2025	29,478.80
0916575236	0095718240	12/14/2024	01/13/2025	37,468.00
0916576515	0095691835	12/15/2024	01/14/2025	37,731.20
0916576905	0095718239	12/16/2024	01/15/2025	37,731.20
0916576906	0095718479	12/16/2024	01/15/2025	21,487.44
0916576907	0095718481	12/16/2024	01/15/2025	17,396.32
0916576908	0095718480	12/16/2024	01/15/2025	23,548.60
0916578571	0095718482	12/16/2024	01/15/2025	18,371.04
0916579340	0095718241	12/17/2024	01/16/2025	37,731.20
0916579864	0095718484	12/17/2024	01/16/2025	22,806.66
0916581174	0095714456	12/18/2024	01/17/2025	2,241.00
0916583018	0095718485	12/19/2024	01/18/2025	24,029.80
0916583019	0095718242	12/19/2024	01/18/2025	36,983.04
0916584060	0095718483	12/19/2024	01/18/2025	18,563.96
			<u>Total:</u>	<u>552,330.92</u>

8. The Admin Claim is comprised of those purchase orders past due and those purchase orders that will become due shortly after filing this Motion.²

9. Upon information and belief, the goods provided by C&D were used as merchandize for sale in the Debtors' business.

RELIEF REQUESTED

10. C&D respectfully requests that the Court enter the Proposed Order attached hereto as **Exhibit A** allowing, and compelling immediate payment of, the Admin Claim.

BASIS FOR RELIEF

11. The Bankruptcy Code addresses when an administrative expense claim must be allowed:

(b) After notice and a hearing, there shall be allowed administrative expenses . . . , including —

(l)(A) the actual, necessary costs and expenses of preserving the estate . . .

11 U.S.C. § 503(b)(1)(A). To qualify as an administrative expense, an expense must therefore (i) arise from a postpetition transaction with a debtor and (ii) be beneficial to the debtor's business operations. *In re Energy Future Holdings Corp.*, 990 F.3d 728, 741-42 (3d Cir. 2021); *In re Marcal Paper Mills, Inc.*, 650 F.3d 311, 314-315 (3rd Cir. 2011). Section 507(a) of the Bankruptcy Code provides that administrative expense claims that are allowed under section 503(b) of the Bankruptcy Code have second priority. See 11 U.S.C. § 507(a)(2).

12. A debtor's postpetition use of goods may be sufficient to establish that such use is an actual, necessary expense of preserving a debtor's estate. *In re Bluestem Brands, Inc.*, Case

² Upon information and belief, the Debtors have copies of the purchase orders. C&D does not attach the purchase orders to this Motion as they are voluminous. Copies of the purchase orders can be provided upon reasonable request and may be provided in advance of (or at) the hearing on the Motion to the extent a hearing is necessary.

No. 20-10566, 2021 WL 3174911, at *5 (Bankr. Del. July 27, 2021) (“In this case, it is undisputed that the Vendors’ goods were physically received by the Debtors after commencement of the bankruptcy cases and were beneficial and necessary to preserving the estate, as the Debtors resold those goods and used the proceeds.”); *In re Goody’s Family Clothing, Inc.*, 392 B.R. 604, 614 (Bankr. D. Del. 2008) (holding that post-petition occupation of non-residential real property established that payment for such use was an actual, necessary expense of preserving the debtors’ estates) (citing *Zagata Fabricators, Inc. v. Superior Air Prods.*, 893 F.2d 624, 627 (3d Cir. 1990)). In the absence of evidence to the contrary, goods or services exchanged at the contracted rate are presumed to be at fair market value, such that the contract rate is presumed to be the “value” for purposes of section 503(b). *In re Smurfit Stone Container Corp.*, 425 B.R. 735, 741 (Bankr. D. Del. 2010).

13. Here, the Admin Claim should be allowed as an administrative expense claim under 11 U.S.C. § 503(b). As evidenced by the invoice date for each purchase order, C&D delivered numerous goods after the Petition Date, during which the Debtors largely continued to operate their business in the ordinary course. Those goods, without question, benefitted the Debtors’ estates. On information and belief, the Debtors have already sold (or intend to sell) the goods provided by C&D. Even if they haven’t, the goods provided by C&D may be assets purchased in any postpetition sale. Consequently, those goods benefitted the estate, and the amounts for which should be allowed as an administrative expense claim under 11 U.S.C. § 503(b). Notably, the Debtors appear to concede this fact. *See Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors To Pay Prepetition Critical Vendor Claims, Foreign Vendor Claims, and 503(b)(9) Claims in the Ordinary Course of Business, (II) Granting Administrative Expense Status to Debtors Undisputed Obligations to Vendors Arising From PostPetition Delivery of Goods*

Ordered Prepetition and Authorizing Debtors To Pay Those Obligations in the Ordinary Course of Business, (III) Authorizing Debtors To Return Goods, (IV) Authorizing Debtors To Pay Certain Prepetition Claims of Lien Kentexs, and (V) Authorizing Financial Institutions To Honor and Process Related Checks and Transfers [D.I. 11] ¶40 (“The Debtors submit that, pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the post-petition delivery of desired and necessary Goods, including Goods ordered prepetition, are in fact administrative expense priority claims in virtually all instances.”). For these reasons, the Admin Claim should be allowed under 11 U.S.C. § 503(b).

14. C&D further requests that this Court compel immediate payment of the Admin Claim. This Court has the discretion to do so. *In re Garden Ridge Corp.*, 323 B. R. 136, 143 (Bankr. D. Del. 2005). In making this determination, the court may consider the prejudice and hardships of the parties as well as the goal of obtaining an orderly and fair distribution among creditors. *In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr. D. Del. 2002).

15. Here, the Debtors should be compelled to immediately pay the Admin Claim. Without payment of the substantial Admin Claim, C&D risks nonpayment in a case where its Allowed Claim is entitled to receive payment in full for providing an actual and necessary benefit to the Debtors’ estates. Nonpayment, let alone the lack of immediate payment, would significantly harm and prejudice C&D, which itself needs to operate its business, pay and otherwise satisfy its own contracts, and fulfill orders of other customers. Importantly, if the Admin Claim is allowed in full, immediate payment would not harm other parties as it would be paid in full at some point. At bottom, C&D does not believe the Debtors should be permitted to risk C&D’s business, and therefore believes the Admin Claim should be immediately paid.

16. In addition, C&D is aware that the Debtors obtained postpetition financing in these chapter 11 cases. Upon information and belief, the Debtors had budgeted for payment of certain postpetition delivery claims such as the Admin Claim. C&D relied on those representations when it delivered goods to the Debtors—goods the Debtors didn't reject and otherwise used to benefit their business and estates. C&D is also aware the Debtors recently filed a budget to pay certain administrative expense claims [D.I. 1434]. Such budget suggests vendors such as C&D will not be paid, but the Debtors should not be permitted to pay certain administrative claims and ignore the Admin Claim reflecting the substantial amount of goods C&D delivered to the Debtors postpetition. For the following reasons, this Court should compel immediate payment of the Admin Claim.

RESERVATION OF RIGHTS

17. C&D reserves all rights with respect to this Motion and Admin Claim, including, but not limited to, the right to amend, update or supplement this Motion or Admin Claim. C&D further reserves all rights to file additional requests for allowance of administrative expense claims. By filing this Motion, C&D does not waive any claims against the Debtors.

NOTICE

18. Notice of this Motion will be provided to: (i) the Debtors; (ii) the Office of the United States Trustee for the District of Delaware; (iii) the Official Committee of Unsecured Creditors; and (iv) all parties that have noticed their appearances in this case pursuant to Bankruptcy Rule 2002. In light of the relief requested, C&D submits that no further notice is required.

WHEREFORE, C&D respectfully requests that the Court enter the Proposed Order attached hereto as **Exhibit A** allowing, and compelling immediate payment of, the Admin Claim, and granting other and further relief as the Court deems just and necessary.

Dated: January 10, 2025
Wilmington, Delaware

TROUTMAN PEPPER LOCKE LLP

/s/ Tori L. Remington

Tori L. Remington (DE No. 6901)
Hercules Plaza
1313 Market Street, Suite 1000
Wilmington, DE 19899-1709
Telephone: (302) 777-6500
E-mail: tori.remington@troutman.com

-and-

Francis J. Lawall (*pro hac vice* forthcoming)
3000 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103-2799
Telephone: (215) 981-4451
Email: francis.lawall@troutman.com

Counsel to Church & Dwight Co., Inc.